

Cause No. 141-307474-19

VICTOR MIGNOGNA	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	141 <sup>ST</sup> JUDICIAL DISTRICT
	§	
FUNIMATION PRODUCTIONS LLC,	§	
JAMIE MARCHI, MONICA RIAL, AND	§	
RONALD TOYE,	§	
<i>Defendants.</i>	§	TARRANT COUNTY, TEXAS

**PLAINTIFF'S RESPONSE AND OBJECTIONS TO DEFENDANT FUNIMATION PRODUCTIONS, LLC'S MOTION FOR REASONABLE ATTORNEY'S FEES, COSTS AND SANCTIONS**

NOW COMES Plaintiff, Victor Mignogna, and files his *Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions* ("Response"). In support thereof, Plaintiff would respectfully show the following:

1. Plaintiff asks the Court to deny Defendant Funimation Productions, LLC's ("Defendant") Motion for Reasonable Attorney's Fees, Costs and Sanctions ("Defendant's Motion") as to the attorney's fees that are in excess of a reasonable attorney's fees. Plaintiff asks the Court to deny Defendant's request for additional sanctions against Plaintiff because such a sanction is not necessary to deter Plaintiff from bringing similar actions. Further, Defendant seeks these sanctions only to punish Plaintiff for his public participation.

2. Additionally, Plaintiff opposes and objects to Defendant's billing entries for costs and attorney's fees offered by Defendant in support of Defendant's Motion. As detailed further herein, Defendant's billing entries include block charges, overstated time charges, excessive attorney rates,

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 1 of 17

excessive attorney conferences, duplication of efforts and overstaffing, and fees for efforts in seeking improper relief. Additionally, Defendant failed to establish the qualifications for its attorney's legal assistant, failed to provide justification for that legal assistant's \$220.00 hourly rate, and billed for clerical work. Accordingly, Defendant's billings for attorney's fees require a reduction of no less than seventy percent (70%).

### **RESPONSE TO REQUEST FOR ATTORNEY'S FEES**

3. Plaintiff opposes and objects to Defendant's request for attorney's fees and costs on the grounds that the fees and costs are in excess of a reasonable amount. The TCPA requires an award of only reasonable attorney's fees. A 'reasonable' attorney's fee 'is one that is not excessive or extreme, but rather moderate or fair.'" See *Sullivan v. Abraham*, 488 S.W.3d 2 (Tex. 2016).

4. The determination of what constitutes a reasonable attorney's fee involves two steps. First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760 (Tex. 2012) see *Dinkins v. Calhoun*, 02-17-00081-CV, 2018 WL 2248572 at 8 (Tex. App.—Fort Worth May 17, 2018, no pet.) (Citing *El Apple* in finding that where there was no evidence regarding the *Anderson Factors* other than the time spent and hourly rate, the evidence was legally insufficient to support the amount awarded by the trial court.)

5. The court then multiplies the number of such hours by the applicable rate, the product of which is the base fee or lodestar. *El Apple I, Ltd.*, 370 S.W.3d at 760. The court may then adjust the base lodestar up or down (apply a multiplier), if relevant factors indicate an adjustment is necessary to reach a reasonable fee in the case. *Id.*

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 2 of 17

6. The relevant factors when making a determination of a reasonable attorney's fee are provided in *Arthur Anderson v. Perry Equipment, Co.*, 945 S.W.2d 812, 818 (Tex. 1997). Those factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

7. The movant seeking attorneys' fees bears the initial burden of submitting adequate documentation of the hours expended and hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933 (1983) ("The applicant should exercise 'billing judgment' with respect to hours worked ... and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.")<sup>1</sup>. A party seeking attorney fees is charged with the burden of showing the reasonableness of the hours billed and, therefore, is also charged with proving that they exercised billing judgment. *Saižan*

---

<sup>1</sup> See *Robrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 483-87 (Tex. 2019) (embracing federal case law applying lodestar method for determining attorney's fees).

*v. Delta Concrete Prods. Co., Inc.*, 448 F.3d 795, 799 (5th Cir. 2006). The Court must review billing records and exclude all time that is excessive, duplicative, or inadequately documented. *Hensley*, 461 U.S. “The hours surviving this vetting process are those reasonably expended on the litigation.” *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). “Billing judgment requires documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant.” *Saizán*, 448 F.3d at 799. The proper remedy for omitting evidence of billing judgment ... does not include a denial of fees but, rather, a reduction of the award by a percentage intended to substitute for the exercise of billing judgment. *Id.*

8. In *Estate of Stokes*, the Fort Worth Court of Appeals noted that what is “reasonable” is the same as what is “reasonable and necessary.” There, the Court considered a Defendant physician’s reward of attorney’s fees, which were reduced from over \$100,000 to \$44,335 following a three (3) day bench trial, in light of the fact that the physician pursued discovery on the merits of his case rather than diligently pursuing dismissal pursuant to the Texas Medical Liability Act when Plaintiff failed to comply with requirement for a timely expert report. *Estate of Stokes*, 2019 WL 4048863 at 1 (Tex. App.—Fort Worth Aug. 28, 2019, no pet. h.) (citing *Robrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019)). While that case was remanded for determination in accordance with *Robrmoos Venture*, it confirms unnecessary attorney’s fees—those which do not further the party’s case—are not reasonable under the lodestar method. This applies here where **Defendant has pursued a strategy of hunting and attacking public statements made by Plaintiff and non-parties, and seeks sanctions as a means of silencing Plaintiff.** In other words, Defendant seeks to recover attorney’s fees for its endeavors to deter Plaintiff from his own public participation, rather than offering any evidence that shows additional sanctions are necessary to sufficiently deter Plaintiff

from bringing similar actions described in this chapter. See Tex. Civ. Prac. & Rem. Code § 27.009(a).

9. In total, seventy percent (70%) of the award sought by Defendant for costs and attorney's fees are not supported by sufficient evidence. For example, Defendant seeks \$12,691.83 in fees for the month of May and a review of the documents establishes that \$6,532.00 are not supported by sufficient evidence as further detailed below.

10. Defendant's billing entries include block charges. That is, the billing entries do not specify the amount of time spent on discrete tasks. When time records are block billed, the court cannot accurately determine the number of hours spent on any particular task, and the court is thus hindered in determining whether the hours billed are reasonable. Without detail about the work done, how much time was spent on the tasks, and how an attorney arrived at his proposed sum, an attorney's testimony lacks the substance required to uphold a fee award. *Robrmoos Venture*, 578 S.W.3d at 483-87; 505 (Tex. 2019)(Embracing Federal case law applying lodestar method of determining attorney's fees; finding insufficient evidence where attorney's testimony was too general to establish that the requested fees were reasonable and necessary, specifically failing to provide sufficient detail of the work done); see also *Barrow v. Greenville Indep. Sch. Dist.*, 3:00-CV-0913-D, 2005 WL 6789456 at 4 (N.D. Tex. Dec. 20, 2005).

11. In the *Barrow* case, the United States District Court for the Northern District of Texas analyzed attorney's fees involving block billing under the *Anderson* factors. There, because of block billing, it was "impossible to conduct meaningful review and determine the precise number of hours that should be reduced in each time entry..." *Barrow*, 2005 WL 6789456 at 4. Following an extensive review of the attorneys' timesheets, the Court reduced each attorney's bill in the percentage of items

that were “too vague to support an award of attorney’s fees.” *Id.*

12. Block billing is replete throughout Defendant’s invoices. It starts with the very first entry—“Review pleadings and check case status; [redacted]...0.5 hours...”. Not only does this entry block together three discrete tasks without providing a time entry for each, it blocks together a task that is entirely redacted. For these time entries that are blocked, the Court has no way of determining how much time was spent on any given task and whether that is a reasonable amount of time. Another illustrative example is on June 28, 2019, for 2.5 hours by Defendant’s counsel, Mr. Volney, for “Attention to drafts of Affidavits of Karen Mika, Scott Barretto, and Tammi Denbow in support of TCPA motion; [redacted].” Here again, Defendant fails to provide sufficient information for the Court to determine how much time was spent on “attention to drafts of affidavits,” whether that amount of time was reasonable, and how much time was spent on the wholly redacted task.

13. Defendant’s redactions prevent the Court from determining what task was performed. In attempting to conceal allegedly privileged information contained in the billing statements, without providing a corresponding privilege log, Defendant has redacted some tasks so completely that the Court cannot assess whether the task was reasonable or not, and in some incidents what the task was at all. For instance, on July 29, 2019, Mr. Volney included two separate entries for “Contact [redacted]” and an entry for “Email [redacted]”. Defendant redacted or failed to include the purpose, subject, or identity of the recipient(s) of these contacts and this email. The Court has no information whatsoever to determine if these tasks justify the fee charged.

14. Defendant’s practice of redacting entire tasks, combined with Defendant’s block billing practice, leaves the Court with no way to determine the reasonableness or necessity of discreet

tasks supposedly performed by Defendant's attorney. See *McGibney v. Rauhauser*, 549 S.W.3d 816, 827 (Tex. App.—Fort Worth 2018, pet. denied). In *McGibney*, the Court considered an attorney's redacted fee statements, where large portions or whole entries were redacted on the basis that they involved communications between clients and attorneys. The Court noted that "... the content of some of the redacted matters may have involved communications between attorney and client. **But a trial court is not at liberty to blindly assume that fees for every communication between counsel and client should, in fairness, be awarded in a lawsuit.**" *Id* (Emphasis added). On the basis that the trial court should not have awarded fees for portions in which the trial court cannot determine the propriety of the fees, and also noting that the attorney billed significant time for opposition research, the issue of fees was remanded back to the trial court. *Id*.

15. Defendant's billing entries contain redactions almost identical to those addressed in *McGibney*. Defendant's documents show entries throughout for "Email Communication [redacted]", "Email and telephone communication [redacted]". A time entry for July 9, 2019, is redacted to "Contact [redacted]". In these instances, *McGibney* requires that these entries be reduced or removed altogether. *Id*.

16. Defendant's billing entries include overstated time charges. Courts can reduce fees where there is evidence that a time entry is overstated. This can be the case where time entries for the same task are inconsistent in the amount of time, where a time entry for attending a deposition exceeded the length of the deposition, or where the length of time a particular task took significantly more time for that task than the opposing attorney. *Kiewit Offshore Services Ltd. v. Dresser-Rand Glob. Services, Inc.*, CV H-15-1299, 2017 WL 2599325 at 6 (S.D. Tex. June 15, 2017) *Robrmoos Venture*, 578

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 7 of 17

S.W.3d. at 483-87.

17. In *Kiewit Offshore Services*, the Court considered a similar case where two (2) attorneys' time entries were inconsistent. The Court held that the inconsistent time entries were evidence of overstated time charges and weighed in favor of a reduction. Considering that the attorney's evidence of fees also included block billing in most of its time entries, the Court reduced the attorney's fees by 20%. *Id.*

18. These deficiencies are evident in Defendant's billing statements. On August 1, 2019, Mr. Orozco and Mr. Volney both prepared for a telephonic hearing. Mr. Orozco spent 0.7 hours on this task while Mr. Volney spent 0.3 hours. In this example, Mr. Orozco's entry contains excess time preparing for a hearing attended by Mr. Volney, his supervising partner. Accordingly, for each entry that demonstrates an overstated time charge, fees should be reduced.

19. Defendant's billing entries include excessive attorney rates. Specifically, Mr. Orozco, an attorney licensed for only eighteen (18) months, is charging an hourly rate of \$410.00 per hour. By way of comparison, Mr. Volney, a partner who has been practicing for decades, has a rate of \$500.00, only \$90.00 greater than Mr. Orozco's rate. Clearly, Mr. Orozco's rate is in excess of what is reasonable based on his limited experience. Plaintiff asks the Court to provide an appropriate reduction to Mr. Orozco's fees in this case.

20. Defendant's billing entries include duplicative, excessive, and unnecessary attorney work. A Court can reduce fees for duplicative or excessive attorney work if they are unreasonable considering the complexity of the issues being considered. *El Apple I*, 370 S.W.3d at 762 ("Charges for duplicative, excessive, or inadequately documented work should be excluded."). It should not be



lost on the Court that Defendant is aligned with three other parties in this case. While Defendant and its co-Defendants have acted in concert with one another throughout every step of this litigation, the Defendants in this case are represented by three separate legal teams. It appears that Mr. Volney even refers to counsel for his co-Defendants as “co-counsel” in several entries (See September 7, 2019 entries; and October 14, 2019 entries). For the month of August, Defendant’s counsel charged \$4,000.00 for meetings, conferences, and emails, mostly with counsel for its’ co-Defendants. *Each* of these Defendants seek fees for months of conferencing among one another. To the extent that each Defendant’s legal team needlessly duplicated tasks, their fees for such tasks are subject to significant reduction.

21. Second, Defendant’s attorneys spend an excessive amount of time needlessly padding its bill. For instance, two of Defendant’s attorneys prepared for a telephonic hearing on a motion for continuance in which they were joined with legal teams from the other Defendants. The hearing itself took 0.3 hours to attend. On August 31, Mr. Volney spent 1.5 hours to “Prepare for an attend meeting with counsel for co-Defendants...”. However, Mr. Orozco’s entry for that day is represented as 2.2 hours to “Prepare for and attend meeting...”. These entries demonstrate impermissible block billing, duplicative billing, and fail to show how this meeting was necessary in defending the suit.

22. Third, Defendant’s attorneys spent significant time giving undue attention to YouTube videos and other public statements in pursuing Defendant’s improper strategy of seeking sanctions to punish Plaintiff for exercising his Constitutional Right of Free Speech. As a matter of law, the Court can only award those fees that were incurred as a necessity in defending this suit. Watching YouTube videos of people discussing the case has zero relevance to Defendant’s burden under the TCPA or,

frankly, any issue in this lawsuit. As a matter of policy, the Court should not award Defendant its attorney's efforts attempting to silence Plaintiff or other parties that support Plaintiff.

23. The Court in *McGibney* faced the issue of whether to bill for excessive “opposition research” and a “troublesome pattern of heavy front-end loading of legal work that might very well have been reasonable, if the case had ever moved beyond the Chapter 27 dismissal stage, but was nevertheless premature and of questionable reasonableness in the early stages of the lawsuit.” *McGibney*, 549 S.W.3d at 823-25. Defendant's fee statements, in addition to duplicating work across three (3) legal teams, demonstrate the same pattern as the attorney in *McGibney*.

24. Defendant failed to establish the qualifications for its attorney's legal assistant or justify the legal assistant's \$220.00 hour rate. Under Texas law, legal assistant fees are a component of attorneys' fees and courts must consider a four-step test to assess whether a legal assistant's fees are recoverable. A party may separately assess and include in the award of attorneys' fees compensation for a legal assistant's work, if that assistant performs work traditionally done by an attorney. In order to recover such amounts, the evidence must establish:

- (1) the qualifications of the legal assistant to perform substantive legal work;
- (2) that the legal assistant performed substantive legal work under the direction and supervision of an attorney;
- (3) the nature of the legal work performed;
- (4) the legal assistant's hourly rate; and
- (5) the number of hours expended by the legal assistant.

See *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 702–04 (Tex. App.—Dallas 1988, writ denied).

25. In *Gill Savings*, the Dallas Court of Appeals considered whether sufficient evidence had been provided to support an award for a legal assistant's fees. There, fee statements included: (1) the

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 10 of 17

date the service was rendered; (2) a brief description of the work that was performed; (3) the time spent performing the particular task; (4) the initials of the person performing the work; and (5) the total amount due as a result of the services which were rendered. Noting that the information provided did not provide any help in determining: (1) the qualifications, if any, of the legal assistants; (2) whether the tasks performed by the legal assistants were of a substantive legal nature or were the performance of clerical duties; and (3) the hourly rate being charged for the legal assistant, the Court denied recovery of the legal assistant's fees. *Id* (Emphasis added). *Id*; see also *Clary Corp. v. Smith*, 949 S.W.2d 452, 469–70 (Tex. App.—Fort Worth 1997, pet. denied) (Denying fees for a legal assistant because, in part, the evidence provided did not explain how the legal assistant was qualified to participate in document production, or even that she was qualified at all).

26. Defendant seeks \$14,554 for its legal assistant's fees alone. Defendant's only evidence of the legal assistant's qualifications is Mr. Volney's statement in his Affidavit that the legal assistant "has been a paralegal since 2000. He has experience managing large, document intensive cases, and performing duties like those he performed in this case..." Defendant offers resumes of its attorneys, but not their legal assistant. The blanket statement provided by Mr. Volney does not provide enough information for this court to assess whether the legal assistant is sufficiently qualified to perform this substantive legal work. Moreover, Defendant provides no justification or explanation for the legal assistant's hourly rate of \$220.00. Defendant provides no more support for his legal assistant's fees than those that were held legally insufficient in *Clay Corp* and *Gill Savings*.

27. Accordingly, Defendant's offered evidence is insufficient to permit an award for fees by its legal assistant and the Court must remove those fees from any award.

28. Defendant billed for clerical work performed by its attorney's legal assistant.

Throughout his billing, the legal assistant for Defendant's attorney charges for clerical work such as scheduling phone conferences via email and managing the case file.

29. Additionally, the billing entries for the legal assistant are so vague that it is impossible to determine what task is being carried out. For instance, the legal assistant regularly bills for "attention to" and then a document or subject. It is unclear if this is reviewing, researching, corresponding, or any number of other tasks or that these tasks were substantive legal work.

30. Considering the unreasonable charges self-evident in Defendant's billing statements, Plaintiff asks the Court to deny any award for charges that were not sufficiently documented and reasonably incurred, adjust Mr. Orozco's hourly rate to \$175.00 per hour, eliminate all fees charged to Defendant's legal assistant for lack of qualification (or alternatively reduce the legal assistant's rate to \$110.00 per hour), and make further appropriate billing judgment reductions to Defendant's fees.

### **RESPONSE TO REQUEST FOR SANCTIONS**

31. In addition to seeking over \$176,000 in attorney's fees and costs, Defendant seeks a sanction award "of not less than \$25,000" against Plaintiff, allegedly "to deter Plaintiff from bringing similar lawsuits in the future." Plaintiff asks the Court to deny Defendant's request for sanctions in its entirety on the grounds that the award will not serve to deter Plaintiff from filing similar lawsuits and because Defendant seeks to use sanctions to punish Plaintiff for his own public participation.

32. Defendant offers four (4) reasons why this Court should issue additional sanctions against Plaintiff: (1) Plaintiff said he may sue other people whom he believes harmed his reputation (2) a third-party has raised funds supporting Plaintiff's effort; (3) Defendant objects to statements

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 12 of 17

made about Defendant in Plaintiff's pleadings and the fact the Court dismissed Plaintiff's claims pursuant to TCPA; and (4) Defendant seeks less than its offered attorney fee bill.

33. A trial court abuses its discretion if the sanctions awarded are greater than necessary to promote compliance. See *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). The TCPA's purpose is to prevent the bringing of meritless lawsuits that discourage the exercise of certain constitutional rights. Tex. Civ. Prac. & Rem. Code §27.002. The Court should consider the following non-exclusive list of factors to the extent that they are relevant:

- (1) the good faith or bad faith of the offender;
- (2) the degree of willfulness, vindictiveness, negligence, or frivolousness involved in the offense;
- (3) the knowledge, experience, and expertise of the offender;
- (4) any prior history of sanctionable conduct on the part of the offender;
- (5) the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;
- (6) the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;
- (7) the relative culpability of client and counsel, and the impact on their privileged relationship of an inquiry into that area;
- (8) the risk of chilling the specific type of litigation involved;
- (9) the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;
- (10) the impact of the sanction on the offended party, including the offended person's need for compensation;
- (11) the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;

(12) burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs.

*Landry's, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 71 (Tex. App.—Houston [14th Dist.] 2018, pet. filed), reh'g denied (Dec. 31, 2018).

34. Defendant has not offered sufficient evidence, or any evidence whatsoever, to support sanctions based on these factors. And an award of these sanctions requires a finding *beyond* the simple fact that Plaintiff's claims were dismissed pursuant to an TCPA motion. Tex. Civ. Prac. & Rem. Code § 29.009.

35. There is no evidence of bad faith, willfulness, vindictiveness, negligence, or frivolousness on Plaintiff's part. There is no dispute that Defendant made the public statements about which Plaintiff complained or that Plaintiff suffered as the result; and Plaintiff alleged long-recognized and valid causes of action against Defendants' and plead sufficient facts as required by Texas' notice pleadings standard to support those causes of action. It is Plaintiff's understanding that his claims were dismissed not on the basis that he didn't state viable claims; but, rather, because the Court believed the evidence offered was not sufficient to prevent dismissal under TCPA.

36. Defendant seeks to improperly infringe on Plaintiff's Constitutional Rights of Freedom of Speech and Association and to Seek Redress by seeking sanctions based on Plaintiff's public statements. Defendant complains about statements generally described but not particularly identified in Plaintiff's pleadings and motions. Defendant fails to explain how any of these statements show bad faith or vindictiveness on Plaintiff's part in bringing the suit. Ironically, Defendant's pleadings and briefing are brimming with attacks against public statements by Plaintiff and non-parties. Defendant claims sanctions should be levied against Plaintiff for his pleadings while engaging in worse

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for Reasonable Attorney's Fees, Costs and Sanctions

Page 14 of 17

behavior.

37. Defendant has spent most of its arguments in every pleading filed about a third party who has raised funds for the purpose of paying Plaintiff's legal costs. However, as the various Defendants in this case have regularly highlighted, the fund is not payable to Plaintiff. The existence of this cannot be considered regarding Plaintiff's ability to pay a monetary sanction. Defendant has not offered any evidence whatsoever on this factor.

38. Defendant offers Plaintiff's testimony from his deposition (that he is considering whether to sue others for defaming him) to support their allegation that Plaintiff must be sanctioned to deter him from filing similar suits. The fact is, however, Plaintiff has not done so. Indeed, Defendant provides no evidence that Plaintiff has brought similar lawsuits in the past or has taken steps to bring similar lawsuits in the future --- Defendant simply provides no evidence that deterrence is a concern. Moreover, this single statement in his deposition is insufficient to prove that any such action would be subject to dismissal under TCPA. Nevertheless, Plaintiff has a Constitutional right to petition the government and seek redress from those who cause him legally-recognized injury, and the Court should be cognizant of attempts to levy a sanction that would improperly chill Plaintiff's ability to exercise his Constitutional rights.

39. In fact, the record before the Court on several of these factors weighs against imposing sanctions. For example, Defendant has shown no evidence of prejudice, apart from out of pocket expenses as a result of Plaintiff's conduct. Also, Plaintiff has not filed a similar suit like this in the past.

40. The sanctions award should be denied in whole or, alternatively, reduced.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks the Court to deny Defendant's request for attorney's fees, to sustain Plaintiff's objections, to deny Defendant's request for sanctions against Plaintiff, and further relief to which Plaintiff may be entitled.

Dated: November **20**, 2019

Respectfully submitted

BEARD HARRIS BULLOCK HUGHES  
and MARTINEZ HSU

By:   
Ryan Sellers

Texas Bar No. 24096803

[rsellers@mhlegalgroup.com](mailto:rsellers@mhlegalgroup.com)

An Lee Hsu

Texas Bar No. 24078699

[ahsu@mhlegalgroup.com](mailto:ahsu@mhlegalgroup.com)

Michael Martinez

Texas Bar No. 24078933

[msmartinez@mhlegalgroup.com](mailto:msmartinez@mhlegalgroup.com)

MARTINEZ HSU

4001 Airport Freeway, Suite 150

Bedford, TX 76021

T: (682) 224-7810

F: (682) 730-8998

Ty Beard

State Bar No. 00796181

Carey-Elisa Christie

State Bar No. 24103218

BEARD HARRIS BULLOCK HUGHES

100 Independence Place, Suite 300

Tyler Texas 75703

T: (903) 509-4900

F: (903) 509-4908

[ty@beardandharris.com](mailto:ty@beardandharris.com)

[carey@beardandharris.com](mailto:carey@beardandharris.com)

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*

Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for  
Reasonable Attorney's Fees, Costs and Sanctions

Page 16 of 17




JIM E. BULLOCK  
Texas Bar No. 00795271  
5 Cowboys Way, Suite 300  
Frisco, Texas 75034  
T: (903) 509-4900  
F: (903) 509-4908  
jim@beardandharris.com

ATTORNEYS FOR PLAINTIFF  
VICTOR MIGNOGNA

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties as required by Texas Rules of Civil Procedure.

  
\_\_\_\_\_  
Ryan Sellers

Cause No. 141-307474-19, *Victor Mignogna v. Funimation Productions, LLC, et al.*  
Plaintiff's Response and Objections to Defendant Funimation Productions, LLC's Motion for  
Reasonable Attorney's Fees, Costs and Sanctions Page 17 of 17